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INDIGENOUS ISSUES

Written statement submitted by the Indian Movement "Tupaj Amaru" and the Indigenous World Association, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 February 1998]

Amendments to the draft declaration on the rights of indigenous peoples (I*)

Introduction

1. Having carefully studied the reports (E/CN.4/1996/84, E/CN.4/1997/102 and E/CN.4/1998/106) of the Working Group established under Commission on Human Rights resolution 1995/32 for the sole purpose of drawing up a draft declaration on the rights of indigenous peoples, the Indian Movement "Tupaj Amaru" together with the Indigenous World Association and other non-governmental organizations have decided to submit the following amendments to the United Nations draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1994/2/Add.1 and annex to Sub-Commission resolution 1994/45) to the Commission on Human Rights at its fifty-fourth session, governmental observers and indigenous representatives for their consideration.

2. In formulating these amendments and changes and introducing new paragraphs and articles to the operative part of the declaration, the organizations, bearing in mind the need to speed progress on the draft declaration, have devoted special attention to the records of the discussions with a view to taking up and condensing the proposals, comments and recommendations made by Governments and indigenous peoples during the meetings of the Working Group.

3. Realizing that some seek to drag out the discussions, dilute the project generally and weaken the sense and legal force of its provisions, we emphasize the urgent need not only to uphold minimum standards but also, where possible, to improve, strengthen and harmonize the legal substance and political, economic and social scope of its provisions as Governments and indigenous representatives have been suggesting in various United Nations bodies.

4. In contrast to the unmoving world vision and paralysing stances taken by some Governments, we believe it is important to conceive of standards as being in permanent flux and evolution in time and space, adapting them to suit the changes in economic and political conditions that have occurred over the past decade, and to the prospect of the new world economic order.

5. We believe these amendments and modifications, more substantive than cosmetic, seek to embody the dearly held hopes and legitimate concerns of indigenous peoples as voiced to the international community, while at the same time meeting the objections of some Governments and shedding light on their subjective interpretations of categories and legal concepts under international public law which must form the cornerstone of the declaration.

6. Given that the current revised text emerged from a legal vacuum on the subject of indigenous peoples' fundamental rights, it has been thought appropriate to devote special priority to the most controversial notions requiring attention, such as recognition of the right of indigenous peoples to define themselves as peoples, the principle of self-determination, the exercise of collective ancestral ownership of land, permanent sovereignty over natural resources, legal protection for cultural and intellectual property, the demilitarization of indigenous lands, and the formulation of a code of conduct to govern the activities of transnational corporations.

7. By proposing amendments to the draft declaration and adding basic rules to the operative part, we hope to have made a substantive contribution to the work of the Commission on Human Rights, so that the provisions and rules set out in the declaration, an instrument of capital importance to indigenous peoples, will be consistent with current international standards, precise enough to give rise to rights and obligations acceptable to the international community, and established upon foundations affording an assurance that they will be applied.

8. We trust in the political will of the international community to ensure that the draft declaration we have worked at for over 15 years is adopted as soon as possible by the United Nations General Assembly in the context of the International Decade of the World's Indigenous People.

9. Bearing in mind the recommendations of the Secretariat drafting bodies and in accordance with the procedure established for the formulation of international rules, it has been thought appropriate to change the order of some articles in the operative part; thus the new and amended articles are appropriately numbered and grouped in the present text under chapters with respective headings with an eye to the subjects they cover, their consistent interpretation and practical application, and their legal, political and cultural scope.

10. It should be noted that, with the exception of the preamble and unamended articles in the operative part, all words, phrases, paragraphs and articles that have undergone any kind of change and all new provisions are presented in bold type.

OPERATIVE PART

Chapter I

General principles

Article 1 (Amended version of article 3, restored to its original position)

Under international law and in accordance with international norms and agreements, indigenous peoples are fully entitled to self-determination. By virtue of this inalienable, indivisible right inherent in all peoples, large or small, indigenous nations shall freely decide on their way of life, freely determine their political status, promote their own economic, social and cultural development and freely dispose of their natural resources and wealth in accordance with their usages, traditions and customary laws within a framework of coexistence and mutual cooperation with the rest of the national community.

The foregoing shall not be so interpreted as to diminish the sovereignty or independence of the national community.

Article 2 (New provision)

Any attempt to sap the will of indigenous peoples freely to select the paths of their own development and assume their own destinies with dignity shall be interpreted as an act designed to deprive a people of its means of

subsistence and, hence, incompatible with the purposes and principles of the Charter of the United Nations. The States parties to this declaration undertake to respect and guarantee the exercise of the right to self-determination as provided for in international instruments.

Article 3 (Amended version of article 31, transferred from Part VII in view of its subject)

By virtue of the principle of self-determination, indigenous peoples' collective right to autonomy and self-government in matters relating to their internal, political and administrative affairs shall be recognized.

For the purposes of this article, local and administrative autonomy shall mean the ability of indigenous populations and communities to exercise the right, within the nation State, to manage and enjoy the benefits of their lands and natural resources, education, culture, communications and information media, especially health, housing, employment and social welfare, under their own rules and organs of self-government.

Article 4 (New provision)

Local authorities shall have the power, emanating from the sovereignty of indigenous communities, to settle disputes by peaceful means, to protect the environment appropriately and to raise local taxes to finance autonomous programmes. States undertake to guarantee unrestricted exercise of the right to autonomy, self-government and self-administration in internal affairs.

Article 5 (Amended version of article 34, transferred from Part VII)

In the exercise of their rights and the enjoyment of their freedoms, indigenous peoples shall be subject only to the limits determined by law solely for the purpose of securing respect for the rights and freedoms of others and meeting the requirements of public order. Indigenous peoples have the collective right to determine the responsibilities of individuals to their communities, **in accordance with their own institutions and rules applicable to self-government.**

Article 6 (Modified version of article 1, which it replaces)

Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international law, **without obstruction or discrimination. Any impediment to the free exercise of these rights shall be construed as an attempt to violate the letter and spirit of international agreements.**

Article 7 (Modified version of article 2, which it replaces)

Indigenous individuals and peoples **are born free and equal in dignity** and rights, and **possess the wit and awareness to live in conditions of equal rights and obligations. No one may be subject to discrimination based on**

indigenous identity, social origins, political opinion or any other consideration, nor required to perform personal labour of any kind without fair remuneration or without his full consent.

Article 8 (New provision)

Indigenous peoples are entitled to legal protection on an equal footing from racial discrimination, and to effective remedies and just and appropriate reparations for any injuries resulting from such discrimination. States undertake, subject to their constitutional procedures, to adopt and promote national and local policies and programmes to combat any form of discrimination and eliminate racial prejudice, intolerance and feelings of superiority, guaranteeing full enjoyment of the rights and fundamental freedoms set forth in this declaration.

Notes

* This statement is continued in documents E/CN.4/1998/NGO/32 to 35.